

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SBC Pacific Bell Telephone Company (U 1001 C), a corporation, for Authority to Categorize Local DA Service as a Category III Service.

Application 02-07-050
(Filed July 31, 2002)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

I. Summary

Pursuant to Rules 6(c)(1) and 6.3 of the Commission's Rules of Practice and Procedure,¹ this ruling determines the scope, schedule, need for hearing and the principal hearing officer for this proceeding.

II. Background

On July 31, 2002, SBC Pacific Bell Telephone Company (SBC California) filed the above-entitled application (Application). The Application stated that the market for local directory assistance (Local DA) in California had become fully competitive and that under applicable Commission rules and precedents,

¹ Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and citations to sections refer to the Public Utilities Code.

SBC California was entitled to operate its Local DA service as a “Category III” service.²

On September 5, 2002, the Application was jointly protested by the Commission’s Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN). The ORA-TURN protest asserted that the Application provided insufficient market share data, failed to address market power criteria as required by D.90-04-031, and failed to contain assurances that the current allowance of three free monthly directory assistance calls to each residential subscriber would be continued if the Application were granted. On September 16, 2003, SBC California replied to the ORA-TURN protest, specifically disputing the claims made by ORA-TURN and renewing its economic argument for Commission approval of Category III status for Local DA.

During the PHC on November 19, 2002, various facts were noted, including information about the rates charged and services provided by affiliates of SBC California’s parent in six other states where the equivalent of Category III pricing flexibility has been granted to the incumbent local exchange carriers. In five of those states, the price is \$1.25 per call. (R.T. at 32.) On April 22, 2003, the

² In Decision (D.) 89-10-031, the Commission divided local exchange carrier telecommunications services into three categories. Category I consists of basic monopoly services whose prices and charges are set or changed only after Commission approval. Category II services are partially competitive services for which the local exchange carrier retains significant, but declining, market power. Between the price ceiling and price floor, prices may be changed by advice letter. Increases to price ceilings require an application. Category III services are fully competitive services that do not require Commission oversight of pricing to protect customers because market forces ensure just and reasonable rates. The carrier may increase or decrease prices through a streamlined advice letter process.

draft decision of the then-assigned Administrative Law Judge (ALJ) Karl J. Bemederfer was circulated for comment. The draft decision denied the Application without prejudice, based on the relationship of the Application to other proceedings currently underway and the perceived benefit to the Commission of concluding the other proceedings prior to beginning consideration of the Application.

On May 12, 2003, comments on the draft decision were received from SBC California, ORA-TURN and the Communication Workers of America, District 9 (CWA). SBC California and CWA disputed the conclusion of the draft decision and urged a hearing on the merits; ORA-TURN supported the draft decision. On May 16, 2003, Greenlining Institute-Latino Issues Forum (Greenlining) submitted reply comments on the draft decision and the comments of the other parties. On May 19, SBC California, ORA and TURN submitted reply comments. The basic disagreement among the parties concerned the question of whether the draft decision correctly balanced the interests of the applicant in gaining prompt consideration of its recategorization request against the benefit to the public and the Commission of deferring consideration of the Application until the completion of other proceedings on the agendas of the Commission and the FCC.

On August 1, 2003, Commissioner Susan P. Kennedy issued a proposed alternate decision, granting the request of SBC California for hearings on the Application. On August 7, 2003, Greenlining filed comments supporting the proposed alternate decision if the interests of its low-income, minority constituents would be addressed in the hearings. On August 14, 2003, ORA-TURN, CWA and SBC California filed comments on the proposed alternate decision. ORA-TURN opposed it, whereas SBC California and CWA supported

it. These positions were maintained in reply comments on the alternate draft decision filed on August 18, 2003 by SBC California and ORA-TURN.

Prior to the Commission meeting on August 21, 2003, both the draft decision and the alternate draft decision were withdrawn, and the application was permitted to proceed to hearings without a Commission decision.

III. Scope of the Proceeding

This ruling outlines the scope of the proceeding, taking into consideration the Application, the ORA-TURN protest, the SBC California response, the record at the PHC, and the various comments and reply comments of the parties on the proposed decision and the proposed alternate decision. Any issue not identified in this ruling is outside the scope of the proceeding. Upon the motion of a party and for good cause shown, the Assigned Commissioner may issue additional rulings that amend and clarify the scope of this proceeding.

The following issues comprise the scope of this proceeding:

1. How should the market for Local DA be defined? Should the market be defined differently for any demographic groups?
2. As defined, has the market for Local DA in the service territory of SBC become fully competitive?
3. Are there customer groups that are likely to have fewer available substitutes for SBC's Local DA service than consumers generally?
4. What would be the impact on price and free call allowances for Local DA if the application were approved?
5. What other customer impacts would result if the application were approved? What would be the impacts on low-income, minority, elderly and non-English speaking customers? What are the usage characteristics of Local DA for various demographic

groups, including but not limited to, low-income, minority, elderly, and non-English speaking customers?

6. Apart from the ability to increase Local DA prices above the current Category II ceiling, what benefits would SBC gain from recategorization to Category III that are not presently available under Category II?
7. What would be the impact on employment in California if the application were approved?
8. What is the status of the quality of service provided by SBC for Local DA, and what would be the expected impact on service quality if the application were approved?
9. Are customers currently adequately informed of their opportunity to request more than one telephone number when they call Local DA, and, if the application were approved, what would be the impact on the Commission's ability to mandate any further disclosure of information to customers if the Commission were to find such disclosure necessary?
10. If the Commission approves the application, what conditions, if any, should be placed on that approval?
11. If the Commission approves the application, should expenses, revenues and capital costs be recorded above the line or below the line for purposes of regulatory accounting?

IV. Discovery

Discovery requests should be limited to items reasonably calculated to lead to the discovery of admissible evidence. For the purpose of this memorandum, "admissible evidence" means evidence generally admissible under the CPUC Rules of Practice and Procedure. If a party reasonably believes that a discovery request seeks an item that is not reasonably calculated to lead to

the discovery of admissible evidence, the request may be objected to on those grounds. Upon being advised that the party to whom a discovery request is addressed has objected to it, the party seeking discovery shall meet and confer with the objecting party. If the parties are unable to resolve the dispute after meeting and conferring, either party may immediately request a ruling from the law and motion judge. To the maximum extent possible, multiple objections should be included in a single ruling request.

Generic objections to discovery requests are discouraged. Parties are expected to act in good faith when formulating or responding to discovery requests.

V. Category of Proceeding and Need for Hearing

Pursuant to Rule 6.1, we determine that the category of this proceeding is “ratesetting” as that term is defined in Rule 5(c) and that there is a need for evidentiary hearings. Applicant has submitted testimony of its witnesses and experts. Evaluation of that evidence and its probative value can only be accomplished through evidentiary hearings. In particular, evidentiary hearings are necessary to provide other parties with the opportunity to cross-examine Applicant’s experts regarding their opinions and conclusions and to produce witnesses, including experts of their own.

VI. Public Participation Hearings

The Commission expects to hold public participation hearings in this proceeding. I will issue a subsequent ruling that schedules those hearings and specifies requirements for notice to customers of those hearings.

VII. Principal Hearing Officer

Administrative Law Judge Kim Malcolm is the principal hearing officer in this proceeding.

VIII. Schedule

SBC serves testimony to update and supplement its application	October 20, 2003
Other parties serves testimony in response to SBC's testimony	December 5, 2003
SBC serves rebuttal testimony	December 20, 2003
Public Participation Hearings	January 2004
Evidentiary hearings begin	January 26, 2004, 10:00 a.m. Commission Courtroom, 505 Van Ness Avenue, State Office Building, San Francisco
Opening briefs filed	February 25, 2004
Reply briefs filed	March 10, 2004
Proposed decision issued	May 2004

IX. Ex Parte Communications

Rule 7 governs ex parte communications in this proceeding. Rule 7(a)(3) permits ex parte communications in this proceeding consistent with the restrictions and reporting requirements set forth in Rules 7(c) and 7.1. The restrictions and reporting requirements in Rules 7(c) and 7.1 shall remain in effect unless and until the ratesetting categorization for this proceeding is modified by the Commission pursuant to Rule 6.4.

X. Electronic Service

Any Appearance that provides an e-mail address shall serve and receive all pleadings electronically in Microsoft Word format. Parties are not required to serve hard copies of pleadings to parties who have provided e-mail addresses. However, if a party in either the Appearance or State Service category has not

provided an e-mail address, then that party must be served with a hard copy. Electronic service does not relieve the parties from the filing requirements of Article 2 of the Commission's Rules of Practice and Procedure.

IT IS RULED that:

1. The scope of this proceeding is as described in this ruling.
2. The schedule for this proceeding is as set forth in this order.
3. The category of this investigation is determined to be "ratesetting" as this term is defined in Rule 5(c) of the Commission's Rules of Practice and Procedure.
4. Discovery will be in accordance with this ruling.
5. Parties shall serve and file pleadings according to this ruling.

Dated September 22, 2003, at San Francisco, California.

/s/ LORETTA LYNCH

Loretta Lynch
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated September 22, 2003, at San Francisco, California.

/s/ FANNIE SID
Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.